

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and)	WC Docket No. 11-42
Modernization)	
)	
Federal-State Joint Board on Universal)	CC Docket No. 96-45
Service)	
)	
Lifeline and Link Up)	WC Docket No. 03-109

**COMMENTS OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER
ADVOCATES
ON THE FURTHER NOTICE OF PROPOSED RULEMAKING**

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I. INTRODUCTION AND SUMMARY

On February 6, 2012, the Federal Communications Commission (“Commission” or “FCC”) issued a Report and Order (“R&O”) and Further Notice of Proposed Rulemaking (“FNPRM”) in these dockets.¹ As described by the FCC, the reforms set forth in the R&O

substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund (USF or the Fund). ...[T]hese significant actions, ensur[e] that eligible low-income consumers who do not have the means to pay for telephone service can maintain their current voice service through the Lifeline program and those who are not currently connected to the networks will have the

¹ *Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Board on Universal Service; Advancing Broadband Availability through Digital Literacy Training*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 11-42, 03-109, and 12-23 and CC Docket No. 96-45, FCC 12-11 (released February 6, 2012) (“FNPRM”). See also Public Notice, DA-344, released March 6, 2012 setting April 2, 2012 for Initial Comments and May 1, 2012 for Reply Comments.

opportunity to benefit from this program and the numerous opportunities and security that telephone service affords.²

The FNPRM asked for comment on matters addressed in the R&O, including:

- A. Establishing an eligibility database³;
- B. Advancing broadband availability for low-income Americans through digital literacy training⁴;
- C. Limits on resale of Lifeline-supported services⁵;
- D. Lifeline support amount for voice services⁶;
- E. Tribal lands Lifeline and Link Up support⁷;
- F. Adding the Women, Infants and Children Program (“WIC”) to the eligibility criteria⁸;
- G. Establishing eligibility for homeless veterans⁹;
- H. Mandatory application of Lifeline discount to bundled service offerings¹⁰;
- I. “Own facilities” requirements¹¹;
- J. Eligible telecommunications carrier (“ETC”) requirements¹²; and
- K. Record retention requirements.¹³

² R&O, ¶ 1.

³ FNPRM, ¶¶ 399-415.

⁴ Id., ¶¶ 416-447.

⁵ Id., ¶¶ 448-461.

⁶ Id., ¶¶ 462-473.

⁷ Id., ¶¶ 474-482.

⁸ Id., ¶¶ 483-485.

⁹ Id., ¶¶ 486-487.

¹⁰ Id., ¶¶ 488-493.

¹¹ Id., ¶¶ 494-501.

¹² Id., ¶¶ 502-504.

¹³ Id., ¶¶ 505-506.

The National Association of State Utility Consumer Advocates (“NASUCA”)¹⁴ submits comments here on establishment of an eligibility database; setting a permanent Lifeline discount; enhancing eligibility for Lifeline¹⁵; mandatory application of Lifeline discount to bundled service offerings; and ETC requirements. The other items may be addressed in NASUCA’s reply comments, depending on issues raised by other commenters.

NASUCA’s comments present the following positions on these issues:

- Granting direct access to eligibility databases by ETCs should not be implemented. By having the state commission or the Bureau check the respective data base, privacy issues are minimized in the first instance. The Commission should establish a cost recovery mechanism for compensating for the maintaining of databases through appropriate charges to ETCs. The cost for maintaining and accessing the databases should be borne by the ETCs through an appropriate charge for having the state commission or the Bureau check the respective data bases upon request from the ETC.¹⁶ Dual databases maintained by state commissions and the Bureau where requests for eligibility determinations are made by ETCs, with the costs of accessing and maintaining the databases borne by appropriate charges to the ETC, appears the most promising. The Commission should reject the request of Verizon and AT&T to

¹⁴ NASUCA is a voluntary, national association of consumer advocates in more than 40 states and the District of Columbia, organized in 1979. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

¹⁵ Items F and G in the list above (adding WIC as a program-based eligibility criterion, and establishing eligibility for homeless veterans) are combined in these comments.

¹⁶ The ETC should not, however, be able to pass this charge through to its consumers through a line item charge on customers’ bills.

establish a non-electronic method to check eligibility through a national third-party administrator because a national third-party administrator would appear to impose additional costs and undermine the Commission's rules that place the obligations of its Lifeline rules on the ETCs that participate.

- The Commission should increase the Lifeline support amount to \$10.00 per eligible household per month; revise the Lifeline support amount every two years to reflect increases in the change in the 95-city average urban rate; help Lifeline consumers understand the value of the Lifeline support amount; preserve the structure of a flat level of Lifeline support for voice service; and direct any expansion of Lifeline support for voice service to additional households by increasing the federal Lifeline income eligibility criterion to 150% of federal poverty guideline ("FPG"), rather than additional Lifeline support for certain households.
- The Commission should include WIC among the programmatic eligibility criteria, and should adopt measures to make it easier for homeless veterans to subscribe to Lifeline.
- Lifeline customers should be able to apply the Lifeline discount to any residential offering of the ETC that provides voice service, including bundles that include other (voice or non-voice) services. Put another way, the ETC should not be able restrict its residential offerings to which Lifeline customers may subscribe. On the other hand, basic voice service should be protected, and a Lifeline customer's failure to pay the full price for the bundle should not allow disconnection of basic voice service.

- The statute dictates a process for carriers to relinquish their ETC status. That process must be followed — including the finding that another ETC serves the entire area served by the relinquishing ETC — in order for that status to be relinquished. ETC obligations — including the responsibility to offer Lifeline service — do not depend (and have never depended) on the ETC’s receipt of high-cost USF funds. AT&T’s suggestion that an ETC’s obligation to offer Lifeline service — like its other “suggestions” that other ETC obligations should be dependent on the receipt of high-cost funding — are not only contrary to law, but bad public policy.

II. THE COMMISSION SHOULD ADOPT AN AUTOMATED LIFELINE ELIGIBILITY DATABASE WITH APPROPRIATE PROTECTIONS FOR LIFELINE-ELIGIBLE CONSUMERS

In the R&O, the Commission concluded that there was widespread agreement that automated databases would both improve the accuracy of eligibility determinations and ensure that only eligible consumers receive Lifeline benefits, and reduce burdens on consumers as well as ETCs. Accordingly, the Commission has proposed establishing an Eligibility Database.¹⁷

. To implement this finding and accelerate an automated verification process, the Commission directed its Wireline Telecommunications Bureau (“Bureau”) and the Universal Service Administrative Company (“USAC”) to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline.¹⁸ To ensure that the Commission has sufficient information to implement such a solution, the Commission seeks focused comments on various issues.

A. HOW CAN THE COMMISSION ENCOURAGE THE ACCELERATED DEPLOYMENT OF WIDESPREAD STATE DATABASES THAT CAN BE USED OR ACCESSED TO STREAMLINE LIFELINE ELIGIBILITY DETERMINATIONS?

The Commission notes that much of the relevant federal eligibility data is housed at the state level.¹⁹ NASUCA submits that one approach would be to have the ETCs contact the states commissions and have the state commissions verify whether the

¹⁷ FNPRM at ¶ 399.

¹⁸ See id. at ¶ 403.

¹⁹ See id. at ¶¶ 404, 405.

applicant is on the state database as an eligible program participant and at the same time contact the Bureau to determine whether the applicant is in automated Federal data base. Granting direct access to either data base to ETCs should not be implemented. By having the state commission or the Bureau check the respective data base, privacy issues are minimized in the first instance. NASUCA also submits that the Commission should establish a cost recovery mechanism for maintaining of databases through appropriate charges to ETCs. NASUCA will respond further in the reply round after reviewing initial comments on whether federal benefit databases under development across states and at the national level can be leveraged to assist in checking for Lifeline eligibility and whether one or dual data bases are more reliable, efficient and impose less costs on both states and ETCs.

NASUCA tentatively supports, however, the establishment of dual data bases. A federal benefit database and the use of state data bases should enhance the checking of lifeline eligibility to reduce fraud waste and abuse.

B. NASUCA OPPOSES USING THE UNIVERSAL SERVICE FUND TO SUPPORT STATE OR FEDERAL DATA BASES

The cost for maintaining and accessing the databases should be borne by the ETCs through an appropriate charge for having the state commission or the Bureau check the respective data bases upon request from the ETC.²⁰ NASUCA notes that the cost of the USF is paid for by consumers through charges on their bill. As a result, the Commission should reject any database inquiry recovery proposal whereby the USF would be increased, which in turn would require greater contributions from consumers.

²⁰ See FNPRM at ¶ 405.

The cost to ensure that only eligible consumers are enrolled in Lifeline should be borne by ETCs who receive compensation from the fund. NASUCA looks forward to initial comments on the implementation and ongoing costs of maintaining state and Federal databases which can be used to provide more concrete data on what charges should apply to ETCs that access the databases.

C. THE COST OF DATA BASES SHOULD BE BORNE BY ETCS AND NOT BY STATES

NASUCA opposes proposals that Lifeline support to states should be conditioned on the states implementation of an eligibility database.²¹ In addition, consumers who are otherwise eligible for Lifeline support should not be denied such support if a state refuses to participate in adopting and maintaining a eligibility database. The ultimate responsibility to determine eligibility should be on the ETCs who receive payments from the USF.

D. PRIVACY ISSUES CAN BE AVOIDED BY HAVING STATE COMMISSIONS AND THE BUREAU ACCESS THE DATA BASES IN LIEU OF LETTING ETCS ACCESS THE DATA BASES.

NASUCA submits that privacy issues can be avoided for the most part by having access to the data bases be limited to state commissions for state databases and to the Bureau for the federal database. The Commission's concern with automatic enrollment programs and the need for eligible applicants to certify that they want to participate in Lifeline can be accommodated by not permitting ETCs to access the data bases directly. An ETC, when requesting an eligibility determination from state commissions and/or the Bureau, would have to provide a certification from the applicant showing their express

²¹ See id. at ¶ 406.

consent to participate in Lifeline.²² NASUCA will reevaluate its recommendation after review of the initial comments on these issues.²³

E. ALTHOUGH NASUCA SUPPORTS DUAL DATABASES, A SINGLE FEDERAL DATA BASE MAY OFFER BENEFITS.

The Commission asks for comment on whether a national eligibility database instead of or in addition to state databases is warranted. The Commission also asks whether a national data base should be populated by individual customer eligibility data stored in state eligibility databases; should state or federal entities pay for the electronic interface between the state and federal databases; and if the national database did not house eligibility data, should it only have the capability of querying the individual state databases to determine consumer eligibility?²⁴

NASUCA awaits initial comments on the issues raised in paragraphs 409-413 of the FNPRM, which affect the Commission's proposal for only a national database. On reply, NASUCA will further comment on whether a single national database has merit. At this time, NASUCA submits that dual data bases maintained by state commissions and the Bureau where requests for eligibility determinations are made by ETCs with the costs of accessing and maintaining the databases are borne by appropriate charges to ETC appear the most promising. ETCs should be prohibited from establishing line item charges on customers' bill for recovery of these database charges.

²² See R&O at ¶ 173.

²³ See FNPRM at ¶ 407.

²⁴ See id. at ¶ 408.

F. NASUCA DOES NOT SUPPORT A NATIONAL THIRD PARTY ADMINISTRATOR NON-ELECTRONIC METHOD TO CHECK ELIGIBILITY

NASUCA submits that the Commission should reject the request of Verizon and AT&T to establish a non-electronic method to check eligibility through a national third party administrator.²⁵ The initial obligation to ensure that an applicant is eligible for Lifeline should be borne by the ETC, and ETCs should bear the costs for creation and maintaining of databases to confirm eligibility. A national third party administrator would appear to impose additional costs and undermine the Commission's rules that place the obligations of its Lifeline rules on the ETCs that participate.

III. THE INTERIM LIFELINE DISCOUNT SHOULD BE REVISED TO \$10 AND ADJUSTED BIENNIALY.

In the R&O, the FCC notes that two aspects of the Lifeline reimbursement mechanism require change “to better reflect the realities of the telecommunications marketplace” – the structure of the Lifeline reimbursement mechanism and the level of reimbursement.²⁶ For non-Tribal Lifeline support, the FCC has eliminated the tiered levels of Lifeline support in favor of a flat amount of federal USF support. As to the level of reimbursement, the FCC has opted to fix the Lifeline support at \$9.25 per month on an interim basis, where \$9.25 reflects the current average of Lifeline support provided. The FCC requests comment on a variety of issues related to establishment of the level of Lifeline support on a permanent basis appropriate to advance the goals of universal

²⁵/ See FNPRM at ¶ 414.

²⁶ See *id.* at ¶ 58.

service.²⁷

In response, NASUCA recommends that the FCC:

- 1) Increase the Lifeline support amount to \$10.00 per eligible household per month;
- 2) Revise the Lifeline support amount every two years to reflect increases in the change in the 95-city average urban rate;
- 3) Help Lifeline consumers understand the value of the Lifeline support amount;
- 4) Preserve the structure of a flat level of Lifeline support for voice service;
- 5) Direct any expansion of Lifeline support for voice service to additional households by increasing the federal Lifeline income eligibility criterion to 150% of federal poverty guideline (“FPG”), rather than additional Lifeline support for certain households.

NASUCA recommends that the permanent Lifeline support be set initially at \$10.00 per month per Lifeline eligible household. NASUCA recommends this amount in part to reverse the negative consequence of the FCC’s adoption of the \$9.25 as the interim amount of support in non-Tribal areas. While the \$9.25 may reflect the current **average** level of support paid to ETCs, the many Lifeline customers who have been receiving higher amounts of federal Tier 1, 2, and 3 up to \$10.00 are set to experience a decrease in Lifeline support as the R&O is implemented. Such a decrease of up to \$0.75 will make voice service for these Lifeline consumers less affordable.

The interim Lifeline support amount of \$9.25 should be increased to \$10.00. The

²⁷ Id. at ¶¶ 58, 462-473.

\$10.00 amount will put Lifeline consumers who had received the full federal Tier 1, 2 and 3 support of \$10.00 in support back at the same level of support. The \$0.75 increase in Lifeline support would also modestly offset the potential increase in the costs to voice service which are likely to result from the *USF/ICC Transformation Order*.²⁸ Wireline Lifeline consumers would receive the direct benefit of the increase to \$10.00. Wireless ETCs would also have to flow through the increase in Lifeline support for the benefit of their Lifeline customers. The net effect of the \$0.75 increase to \$10.00 on the USF will of course be dependent in part on the number of Lifeline consumers enrolled.²⁹

NASUCA then recommends that the Lifeline support amount be subject to increase every two years, based on changes in the 95-city average urban rate used in the high-cost fund.³⁰ With the adoption of a flat level of support, the FCC has broken the tie between changes in the wireline subscriber line charge and the level of Lifeline support.³¹ Going forward, some mechanism is needed to maintain some parity between the costs for basic voice service and the amount of Lifeline support available to make voice service more affordable to low income consumers. The FCC should adopt this indexing approach.

As part of the FNRPM, the FCC suggests that with better data, the optimal level

²⁸ NASUCA acknowledges that the FCC has prohibited carriers from charging any ARC to Lifeline consumers. CITE. However, imposition of an ARC surcharge is but one way for carriers to increase rates to offset the impacts of the Connect America Fund access and intercarrier compensation reforms.

²⁹ It is unclear from the R&O whether the \$200 million in annual savings, which the FCC estimates the Lifeline reforms will yield, includes the simple reduction in Lifeline support to consumers who were receiving more than the current average of \$9.25.

³⁰ See 47 C.F.R. § 316(b).

³¹ *In the Matter of Access Charge Reform*, CC Docket No. 96-262, et al., Sixth Report and Order, et al., FCC 00-193, 15 FCC Rcd 12962 (2000) (“*CALLS Order*”), ¶ 216; *In the Matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, CC Docket No. 00-256, et al., Second Report and Order, et al. FCC 01-304, 16 FCC Rcd 19613 (2001) (“*MAG Order*”).

³³ FNPRM ¶¶ 464-465.

of Lifeline support to improve voice penetration rates could be identified.³³ NASUCA is concerned that such an endeavor would pursue an elusive goal, at the cost of time and resources. NASUCA recommends that the FCC instead focus on how to help prospective and current Lifeline eligible consumers understand the value of Lifeline support. The first step is to help Lifeline eligible consumers understand that the benefits of Lifeline support justify the effort required to establish and reaffirm the consumer's eligibility. A higher amount of Lifeline support will incent more consumers.

The second step is to help Lifeline consumers understand the amount of Lifeline support which they control.³⁴ For Lifeline consumers with a choice between wireline and wireless, knowing the amount of Lifeline support should help the consumer select the service offering which is best for them – whether between basic and a bundle, wireless with monthly charges or prepaid, or other options. There is an inherent benefit to both Lifeline consumers and the USF if the Lifeline consumer makes a well-informed decision when signing up for Lifeline service. Shopping for and maintaining voice service with Lifeline support should not dominate the low-income consumer's life. The Lifeline consumer can then devote their time to other endeavors, with the comfort that they have voice service to connect with family, their community and public safety on more affordable terms. Customer satisfaction should in turn reduce the incidence of apparent duplicates, situations where a Lifeline consumer has switched from one Lifeline service but the two Lifeline services appear to overlap. Lifeline consumers would then switch to another Lifeline service offering if they understand that the new Lifeline service offers

³⁴ In the R&O, the FCC has taken “steps to ensure that Lifeline consumers receive accurate and quality information from ETCs.” R&O ¶ 271. However, the FCC has not required ETCs to communicate the dollar value of Lifeline support, nor has the FCC identified this as information to be included in any public outreach efforts.

more benefit and value, for the same amount of Lifeline support.

This focus on helping to educate and inform prospective and current Lifeline consumers complements NASUCA's recommendation that the FCC keep the structure of Lifeline support simple. NASUCA supports the FCC's adoption of a flat rate of federal Lifeline support. Different levels of Lifeline support for wireline and wireless, as proposed by some parties, would add complexity to the consumer education process and not be neutral from a technology or competitive perspective.

As part of FNPRM, the FCC also requests comment on several different proposals that could expand the number of Lifeline recipients, such as allowing one household to obtain support for one wireline service and one wireless service, or additional Lifeline support for wireless service to households with multiple members. Although NASUCA has often taken the position that wireless service is a complementary service, not a pure substitute for wireline,³⁵ NASUCA does not favor allowing an eligible low income household to obtain one wireline service with Lifeline support and one wireless service with Lifeline support. The core goals of universal service may be met with Lifeline support for one voice service per eligible household. NASUCA is also opposed to allowing additional Lifeline support to households with multiple family members. Lifeline support should be allowed to reduce the cost of a wireless family plan, rather than multiple plans for various family members. NASUCA does not favor allowing even a reduced level of Lifeline support for a second wireless service for a family member, as

³⁵ See, e.g., WC Docket No. 05-337, CC Docket No. 96-45, NASUCA Reply Comments (June 2, 2008) at 19-21. See also Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, WT Docket No. 11-65, FCC Staff Analysis and Findings, ¶¶ 29-31.

proposed by T-Mobile.³⁶

If the FCC contemplates any change which would expand the volume of consumers that receive Lifeline support, NASUCA recommends that the FCC increase the federal income eligibility criterion from 135% of federal poverty guidelines (FPG) to 150% of FPG or higher. The FCC requested comment on this possible change in 2004 as part of an earlier FNPRM.³⁷ NASUCA and low income advocacy groups have supported the increase.³⁹ NASUCA acknowledges that the FCC has determined in the R&O not to make this change to this Lifeline eligibility criterion at this time.⁴¹ However, NASUCA urges the FCC to revisit this Lifeline eligibility criterion change, to allow more consumers who are low-income to be eligible for Lifeline support, rather than adopt changes which would allow more Lifeline support to go to some households.

IV. NASUCA SUPPORTS MEANS TO ENHANCE ENROLLMENT IN LIFELINE.

The Commission seeks comment on enhancing Lifeline participation by adding the WIC program to the categorical eligibility list.⁴² NASUCA supports this change.

The WIC program clearly assists low-income consumers who need the assistance

³⁶ See FNPRM, ¶ 471.

³⁷ In re Lifeline and Link Up, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004), ¶¶ 56, 57 (“2004 Lifeline and Link Up Order and FNPRM”)

³⁹ Id. at 1-13, with supporting affidavit of Roger C. Colton; NASUCA Comments to Refresh the Record (August 24, 2007) at 3-10; NASUCA Comments (July 7, 2008) at 27-28; NASUCA Comments re Joint Board Referral Order (July 15, 2010) at 6-7.

⁴¹ R&O, ¶¶ 63, 68.

⁴² FNPRM, ¶ 483.

that Lifeline brings in addition to the nutritional services that the program itself delivers.⁴³

Crucially, as the FCC states, “over 35 percent of WIC participants do not participate in another federal assistance program.”⁴⁴ The Commission also acknowledges that “[o]ne commenter estimates that more than two-thirds of WIC participants are at or below the federal poverty line....”⁴⁵

The Commission also seeks comment on establishing eligibility for homeless veterans.⁴⁶ NASUCA supports such measures. Specifically, NASUCA supports the proposal that a low-income consumer who “lacks any income be permitted to sign a certification under penalty of perjury that he or she has no income, with some form of additional certification from an authorized VA official, such as an outreach worker or program coordinator, that the person in question is a homeless veteran or at risk of becoming homeless.”⁴⁷ Given the sacrifices that homeless veterans have endured, and their difficulties in obtaining employment post-service, the FCC should also consider allowing them to be eligible for Lifeline with certification from an authorized VA official even if the veteran has some income.

V. LIFELINE CUSTOMERS SHOULD BE ABLE TO APPLY THE LIFELINE DISCOUNT TO ANY OF THE ETC’S OFFERINGS THAT INCLUDE VOICE SERVICE.

⁴³ Id., ¶ 484.

⁴⁴ Id., citing Media Action Grassroots Network and Consumers Union Reply Comments at 12; Aug. 17 WIC *ex parte* Letter.

⁴⁵ Id., citing Food and Research Action Center Sept. 2 *ex parte* letter. Although the Commission “note[s] that such WIC participants are already eligible for Lifeline through the income eligibility standard” (id.), this overlooks the administrative effectiveness (for consumers, ETCs, and USAC) of the categorical eligibility criteria.

⁴⁶ Id., ¶ 487.

⁴⁷ Id.

In the FNPRM, the Commission noted that in the R&O it had

adopt[ed] a federal policy providing all ETCs (whether designated by a state or this Commission) the *flexibility* to permit Lifeline subscribers to apply their Lifeline discount to bundled service packages or packages containing optional calling features available to Lifeline consumers. Giving ETCs the flexibility to offer expanded service packages to Lifeline consumers will enhance consumer choice by making broadband and mobile voice services more accessible and affordable for low-income consumers.⁴⁸

Despite recognizing the value of this flexibility for consumers,⁴⁹ the Commission seems unwilling to recognize the need to deny ETCs the ability to deny that value to Lifeline customers. As the Commission states,

In the *Lifeline and Link Up NPRM*, the Commission also sought comment on amending the Commission's rules to adopt a uniform federal requirement that Lifeline discounts may be used on any Lifeline calling plan offered by an ETC with a voice component, including bundled service packaging combining voice and broadband, or packages containing optional calling features.⁵⁰

It is not at all clear why, based on the comments received for the NPRM, the Commission did not simply adopt such a federal policy in the R&O, instead seeking further comment on the issue.

As the Commission knows, this is not a new issue. The FNPRM cites the 2007 petition filed by Sprint Spectrum LP ("Sprint") seeking to preempt a decision by the Kansas Corporation Commission ("KCC") requiring ETCs to apply the Lifeline discount to any offering, thus giving the Lifeline customer the flexibility to choose the bundle that offered the customer the most value.⁵¹ (The Commission notes that Oregon and Texas

⁴⁸ FNPRM at ¶ 488 (emphasis added).

⁴⁹ R&O at ¶¶ 316-317.

⁵⁰ FNPRM at ¶ 489, citing *Lifeline and Link Up NPRM*, 26 FCC Rcd at 2850, ¶ 258.

⁵¹ See FNPRM, n. 1195.

have similar rules.⁵²⁾ The Commission received comment on Sprint's petition.

NASUCA filed comments on the petition. Those comments demonstrated that universal service principles allow eligible consumers both the Lifeline discount and choice of comparable services on comparable terms⁵³; that the Commission rules require the ETC to apply the Lifeline discount to reduce the Lifeline consumer's total bill, not as a cap on how much the lifeline consumer may spend on telecom services⁵⁴; and that other carriers and states allow low income consumers both lifeline assistance and choice of calling services.⁵⁵

On the latter issue, the Commission now asks for "comment on the extent to which specific states mandate that ETCs allow the application of Lifeline discounts to expanded service plans."⁵⁶ The Commission itself cites Oregon, Texas and Kansas as such states.⁵⁷ In NASUCA's 2007 comments, it was noted that Utah⁵⁸ and Missouri⁵⁹ have such requirements. California should also be added to the list. And in other states, it appears that all ETCs allow Lifeline customers to subscribe to bundles, even without a formal regulation.

⁵² Id.

⁵³ NASUCA Comments (August 9, 2007) at 3-4.

⁵⁴ Id. at 4-6.

⁵⁵ Id. at 6-7.

⁵⁶ FNPRM, ¶ 491.

⁵⁷ Id., ¶ 490.

⁵⁸ Utah Admin. Code R746-341.5 Lifeline Telephone Service Features.

⁵⁹ See *In the Matter of the Application of Missouri RSA No. 5 Partnership for Designation as a Telecommunications Company Carrier*, Case No. TO-2006-0172, 2006 Mo. PSC LEXIS 1242 (Sept. 21, 2006); see also, *In the Matter of the Application of USCOC of Greater Missouri, LLC for Designation as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Case No. TO-2005-0384, 2007 Mo. PSC LEXIS 640 (May 13, 2007).

In 2010, NASUCA passed a comprehensive Lifeline reform resolution.⁶⁰ That resolution “supports a policy that requires carriers to offer discounted basic service while permitting Lifeline customers to purchase packages and bundles, and that requires carriers to apply the full federal Lifeline discount and any applicable state Lifeline discount to basic local service and to the price of any service package containing basic local service that they offer....”⁶¹ NASUCA submits that this policy should be adopted by the Commission. NASUCA would respond in the affirmative to the Commission’s question whether “a uniform federal requirement mandating that ETCs permit Lifeline subscribers to apply their discount on any service offering that includes voice further the statutory principle that consumers have access to quality services at ‘just, reasonable, and affordable rates’ because it would make bundled offerings more affordable to low-income consumers?”⁶²

The Commission asks, “Would there be any growth in Lifeline subscription rates stemming from the extension of Lifeline support to expanded service packages?”⁶³ Two anecdotal indications from Ohio suggest the answer: First, beginning in the late 1980s, Ohio had a state lifeline program that limited eligible customers to measured or message service if their local carrier made such options available.⁶⁴ Given that these limiting options were unpopular, lifeline subscription itself was very limited. Second, in a later

⁶⁰ The resolution was cited and included with NASUCA’s NPRM comments. It is attached to these comments as well.

⁶¹ See attachment at 3.

⁶² FNPRM, ¶ 490.

⁶³ *Id.*, ¶ 492, citing Verizon Comments at 16 (“Assuming the extension of Lifeline support to bundled services will increase participation in the Lifeline program, this approach will further grow the fund and has the potential to effectively negate other efforts to constrain the size of the fund.”) and Verizon Jan. 17 *ex parte* Letter at 2. NASUCA strongly rejects Verizon’s view that constraining the size of the fund is more important than bringing Lifeline benefits to otherwise eligible consumers.

⁶⁴ Former Ohio Revised Code 4905.76 (repealed in 1999).

state lifeline program resulting from settlements with individual local companies, program subscription increased when eligible consumers were allowed to purchase multi-service bundles.⁶⁵

The FNPRM notes the insubstantial arguments against requiring ETCs to apply the Lifeline discount to any bundle the **customer** chooses:

Others argued that the Commission should not interfere with the products offered by ETCs and should allow the market to resolve this issue. Certain ETCs argued that requiring such ETCs to offer these added features as part of their Lifeline service offerings could upset their respective business models.⁶⁶

It is almost Orwellian for carriers to argue that providing \$9.25 a month in support for a customer's choice of a bundle "interferes" with their products. And it is the **public** interest that should dictate the Commission's decisions here, not the self-interested, transitory business plan of one or more carriers.⁶⁷

The Commission asks, "To what extent could Lifeline consumers risk the termination of their local voice service based on an inability to pay for the remaining portion of their chosen calling plan?"⁶⁸ NASUCA's 2010 resolution addressed this issue, stating that federal "policy should also include a prohibition on disconnection of the basic service portion of telecommunications service if the basic amount is paid, if the carrier offers a basic service, and if the carrier does not offer a stand-alone basic service, a provision that the lowest-price package be maintained if sufficient payment is made for

⁶⁵ The precise numbers were deemed proprietary by the carriers in question.

⁶⁷ See *Alenco Communications, Inc. v. FCC*, 201 F.3d 608 (5th Cir. 2000). A carrier that is inflexibly fixed on its business plan could always seek a waiver of the Commission rule, if it could show that its service allowed by the waiver (and ostensibly prevented by the rule) was sufficiently in the public interest. could

⁶⁸ FNPRM, ¶489 (citations omitted).

that lowest-price package....”⁶⁹ Again, anecdotal evidence from the Ohio program discussed above indicates that although disconnection rates for Lifeline customers who subscribed to service in addition to basic service were higher than for those who subscribed only to basic service, and the rate for customers who subscribed to bundles was somewhat higher, neither rate was high enough to generate major concern.⁷⁰

VI. ETCs ARE REQUIRED TO OFFER LIFELINE.

In the FNPRM, the Commission seeks comment on AT&T’s suggestion “that the Commission should allow incumbent wireline Lifeline providers to choose whether to participate in the Lifeline program, arguing that wireline telephone companies are no longer the dominant provider of voice services.”⁷¹ Notably, the AT&T *ex parte* in question contains not a single citation to 47 U.S.C. § 214 or § 254 as to how those statutes would allow what the company wants, which is part and parcel of AT&T’s incessant desire to be relieved of all public interest obligations.⁷²

The statute is clear: ETCs must offer Lifeline service. 47 U.S.C. § 214(e) defines ETCs, and states unequivocally that an ETC “**shall**, throughout the service area for which the designation is received ... offer the services that are supported by Federal universal service support mechanisms under section 254 (c) of this title.... “ (Emphasis added.)

The Commission has also unequivocally defined Lifeline as a supported service under § 254(c).⁷³ Thus ETCs must offer Lifeline throughout their service territories,

⁶⁹ Attachment at 3.

⁷⁰ As noted above, the precise numbers were deemed to be proprietary.

⁷¹ FNPRN, ¶ 503, citing AT&T Jan. 24 *ex parte* Letter at 1.

⁷² See AT&T NPRM Comments at 55.

⁷³ See R&O, ¶¶ 13-14.

regardless of whether they are the dominant carrier in that territory.⁷⁴

The statute establishes a single means by which an ETC may relinquish its designation. That language deserves quotation at length, which utterly dispels AT&T's suggestion that relinquishment can be easy or voluntary:

(4) Relinquishment of universal service

A State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) **shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.** The State commission (or the Commission in the case of a common carrier designated under paragraph (6)) shall establish a time, not to exceed one year after the State commission (or the Commission in the case of a common carrier designated under paragraph (6)) approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.⁷⁵

Thus in order for an ETC to relinquish its designation, **there must be one (or more) other ETCs serving the entirety of the relinquishing ETC's service area.** That requirement clearly is not contemplated in AT&T's "suggestion" for relinquishment. The Commission was perfectly correct in stating that "it would 'thwart achievement of the

⁷⁴ It must also be recognized that AT&T's "non-dominance" theory depends on at least two shaky premises: that wireless service is a substitute for wireline service (see fn. 35, above), and that cable providers offer service throughout the incumbent wireline carriers' territories.

⁷⁵ 47 U.S.C. § 214(e)(4) (emphasis added).

objectives established by Congress to relieve an existing ETC of the obligation to provide Lifeline if there was no other ETC in that particular area willing to offer Lifeline services.”⁷⁶

The statute also blocks AT&T’s other proposal “that all providers of voice and broadband services register to become Lifeline providers, outside of the current ETC designation process.”⁷⁷ Sec. 254(e) provides that “only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support.” Although there are undoubtedly ways to make the ETC designation process more efficient,⁷⁸ the process must comply with the statute.

Similarly, MetroPCS’s proposal “that the Commission implement a voucher-based Lifeline program in which Lifeline discounts would be provided directly to eligible low-income consumers,”⁷⁹ although interesting, runs up against the statute’s limitations. Such vouchers would be redeemable only with carriers that had been designated as ETCs, in order for the discounts to be funded under the USF.

The Commission’s goals “to simplify carrier participation in the program, while protecting against waste, fraud and abuse”⁸⁰ are laudable. But they must be acted upon in a fashion that conforms to the enabling statutes.

VII. CONCLUSION

NASUCA commends the Commission for its efforts to improve the Lifeline

⁷⁶ FNPRM, ¶ 502, quoting *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at ¶ 1102.

⁷⁷ FNPRM, ¶ 504, citing *NPRM*, 26 FCC Rcd at 2864-65, ¶¶ 310-312.

⁷⁸ FNPRM, ¶ 504.

⁷⁹ *Id.*, citing Letter from Carl Northrop, Telecommunications Law Professionals, on behalf of MetroPCS, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, (filed Jan. 25, 2012).

⁸⁰ FNPRM, ¶ 504.

program, which brings universal service fund benefits direct to demonstrably needy customers. The Commission should adopt NASUCA's recommendations set forth in these comments.

Respectfully submitted,

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THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

RESOLUTION 2010-02

CALLING FOR REFORM OF THE LIFELINE PROGRAM, INCLUDING REFORM FOR PREPAID WIRELESS LIFELINE SERVICES

WHEREAS, Low-income support mechanisms such as Lifeline have long been part of the national universal service goal;

WHEREAS, Lifeline has been an important means of achieving the goals of affordable universal service for all;

WHEREAS, wireless service has become an increasingly important part of telecommunications service, including Lifeline;

WHEREAS, unsettled economic times and changes in technology and consumer lifestyles have created the need for new approaches to low-income telecommunications assistance programs;

WHEREAS, this has created the need for the Federal Communications Commission (“FCC”) to reexamine its earlier decisions regarding the Lifeline program;

WHEREAS, carriers have sought and the FCC and state commissions have allowed on an ad hoc basis a category of “low-income” eligible telecommunications carriers (“ETCs”), that seek only low-income funding under the federal universal service fund and do not seek high-cost funding

WHEREAS, the purpose of Lifeline programs is to balance the maximum value for low-income customers with the costs imposed on all customers who pay for the Lifeline programs;

WHEREAS, the federal Lifeline discount for incumbent local exchange carriers (“ILECs”) not serving tribal lands consists of three tiers, with Tier 1 being a waiver of the subscriber line charge (“SLC”), Tier 2 being an additional \$1.75 discount off the retail rate for basic service, and Tier 3 being an additional \$1.75 discount off the retail rate for basic telephone service if the state matches the federal Tier 3 discount;

WHEREAS, the federal Lifeline discount for competitive local exchange carriers (“CLECs”) and wireless carriers has been the same dollar amount as for ILECs, even where the carrier does not charge a SLC;

WHEREAS, Lifeline service traditionally consisted of the most basic local service offered by the ILEC, which in many areas includes unlimited local calling;

WHEREAS, the FCC has required non-ILEC Eligible Telecommunications Carriers (“ETCs”) it designates to offer local calling usage that is comparable to the ILECs’ local calling usage;

WHEREAS, technology changes and lifestyle changes have led carriers to market numerous additional services, and to create bundles and packages of services that include basic service along with additional services;

WHEREAS, wireless carriers typically offer only packages that include services beyond basic and usage that goes beyond local usage;

WHEREAS, some state commissions and some carriers have limited Lifeline customers' access to packages that include more than basic service or, in the case of wireless carriers, to the lowest-usage package;

WHEREAS, in the National Broadband Plan, the FCC has recommended that the FCC and states should require ETCs to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service;

WHEREAS, the offering of service packages to Lifeline customers gives those customers choices, but there are concerns that carriers will heavily market packages to Lifeline customers that are beyond the customers' means, and that the Lifeline customers will therefore have service disconnected for non-payment at a rate significantly greater than that applicable to Lifeline customers who subscribe only to limited services;

WHEREAS, the FCC has designated and has allowed the states to designate Lifeline-only ETCs that do not receive high-cost funds;

WHEREAS, the FCC has placed conditions on grants of low-income ETC status, including conditions based on the carrier's status as a wireless reseller;

WHEREAS, these ETCs, principally prepaid wireless carriers, have brought telephone service to hundreds of thousands of low-income customers who have never had or have dropped their wireline service and previously could not afford wireless service;

WHEREAS, the existence of these prepaid wireless Lifeline-only ETCs has resulted in substantial growth to the federal USF paid by most customers, without a necessary assurance of adequate value provided to the Lifeline customer, or the most efficient use of Lifeline benefits;

WHEREAS, the appearance of prepaid wireless carriers as Lifeline-only ETCs that do not offer a Lifeline discount off their retail rate but instead offer "free" service (with or without a "free" handset) to Lifeline customers has also complicated the calculation of the value of Lifeline service, especially where the free service includes limited usage minutes and requires customers needing additional minutes to purchase those minutes from the carrier;

WHEREAS, the existence of wireless ETCs with limited usage plans, and especially prepaid wireless ETCs that offer extremely limited usage packages on their "free" plans, raises concerns about the equivalency of this calling to the ILECs' calling packages available to Lifeline customers;

WHEREAS, the existence of wireless ETCs, especially Lifeline-only wireless ETCs, raises concerns about ensuring that each household receives only one Lifeline benefit and ensuring that no carrier receives Lifeline support when customers opt for a different Lifeline service;

WHEREAS, there have been concerns raised about whether prepaid wireless carriers, especially prepaid Lifeline-only ETCs, do or should contribute to state funds, especially state 9-1-1 funds;

WHEREAS, in the National Broadband Plan, the FCC has noted that, in designing a Lifeline broadband program, it should consider the recent experience with expanding Lifeline to non-facilities-based prepaid wireless providers;

WHEREAS, wireline carriers' rates, including rates for basic service and for packages, are increasingly being rate-deregulated at the state level, and wireless carriers' rates, including prepaid wireless carriers' rates have not been rate-regulated, giving rise to additional concerns about the value and efficiency of Lifeline benefits;

WHEREAS, the FCC's rules for designating ETCs (including low-income ETCs) govern only ETC designations that the FCC makes, and are only suggestions for states that designate ETCs;

WHEREAS, a number of applicants for low-income ETC status have filed petitions for forbearance from statute or FCC rules that contain insufficient information to allow a determination of whether forbearance is in the public interest, specifically a description of the service(s) to be offered that will be subject to the Lifeline discount; *now, therefore be it*

RESOLVED, That the National Association of State Utility Consumer Advocates ("NASUCA") continues to support the Lifeline program, particularly for wireline service; *and be it further*

RESOLVED, That, given the use of dollars from around the country to support the federal Universal Service Fund, NASUCA supports the FCC's adoption of minimum standards for state ETC, especially low-income ETC, designation; *and be it further*

RESOLVED, That NASUCA supports a policy that requires carriers to offer discounted basic service while permitting Lifeline customers to purchase packages and bundles, and that requires carriers to apply the full federal Lifeline discount and any applicable state Lifeline discount to basic local service and to the price of any service package containing basic local service that they offer; and *be it further*

RESOLVED, That such policy should also include a prohibition on disconnection of the basic service portion of telecommunications service if the basic amount is paid, if the carrier offers a basic service, and if the carrier does not offer a stand-alone basic service, a provision that the lowest-price package be maintained if sufficient payment is made for that lowest-price package; *and be it further*

RESOLVED, That regulators should ensure that Lifeline customers with packages are not disconnected at a significantly greater frequency than Lifeline customers without packages; *and be it further*

RESOLVED, That the FCC should require any forbearance petition or petition for low-income ETC designation filed for a low-income ETC service to include a complete description of the service to be offered; *and be it further*

RESOLVED, That the FCC should consider establishing minimum standards of service for prepaid wireless Lifeline service that would apply to all prepaid wireless Lifeline services, facilities-based or not, and satisfy the public interest by providing adequate value for Lifeline recipients and comply with the universal service mandates of the Act; *and be it further*

RESOLVED, That the FCC should specifically adopt a minimum standard to ensure adequate value to prepaid Lifeline wireless customers from the service (i.e., minimum number of monthly minutes,

maximum price for additional minutes and maximum price for text messages, etc.); *and be it further*

RESOLVED, That there should be continued evaluation of appropriate federal default rules for ongoing support when there is no monthly billing, carrier contributions to state funds, quality of service obligations, double billing, protection from fraud, recertification, and audits; *and be it further*

RESOLVED, that the FCC should investigate whether the Lifeline discount should no longer be taken off the retail rate, but off some measure of wholesale or forward-looking cost, especially where the carrier's services are not price-regulated; *and be it further*

RESOLVED, That the NASUCA Telecommunications Committee, with the approval of the Executive Committee of NASUCA, is authorized to take any and all actions consistent with this Resolution in order to secure its implementation.

Approved by NASUCA:
Place: San Francisco, CA
Date: June15, 2010

Submitted by:
NASUCA Telecommunications Committee